P.R. No. 1421/06
Presented by Shri Manohar Mehta
dated 12.5.06

Single Bench

IN THE HIGH COURT OF JUDICATURE AT CHHATTISGARH

SECOND APPEAL NO. 221 OF 2006

APPELLANT:
[Plaintiff]

PARAS KUMAR SONI, SON OF SHRI JAGRAM SONI, AGED ABOUT 57 YEARS, RESIDENT OF BUDHAPARA, RAIPUR (C.G.)

Vs

RESPONDENTS:
(Defendants)

1. RAIPUR MUNICIPAL CORPORATION, RAIPUR; THROUGH THE COMMISSIONER, RAIPUR MUNICIPAL CORPORATION, MALVIYA ROAD, RAIPUR.
2. THE COMMISSIONER, RAIPUR MUNICIPAL CORPORATION, RAIPUR

Civil Suit & First Appeal was valued at Rs.800/-
Court fee affixed was Rs.80/-
This appeal is also valued at Rs.800/- Court fee affixed is Rs.80/-

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE, 1908

Being aggrieved by the order

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 221 of 2006

Appellant/ Plaintiff	:	Paras Kumar Soni
		Vs.
Respondents/ Defendants	:	Raipur Municipal Corporation, Raipur and another

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JUDGMENT

POST FOR JUDGMENT ON 12-09-2006

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

Second Appeal No. 221 of 2006

Appellant/ Plaintiff	:	**Paras Kumar Soni**
		Vs.
Respondents/ Defendants	:	**Raipur Municipal Corporation, Raipur and another**

Appellant by Shri B.P. Sharma, Advocate.

JUDGMENT
(Delivered on 12/09/2006)

Dhirendra Mishra, J

The appellant/plaintiff has preferred this second appeal under Section 100 of the Code of Civil Procedure against the judgment dated 31st March 2006 passed by the learned 14th Additional District Judge (FTC), Raipur in M.J.C.No. 2/06 by which the application under Section 5 of the Indian Limitation Act filed by the appellant/plaintiff for condoning the delay of 13 days in filing the appeal against the order dated 7.10.2005 passed by learned First Civil Judge, Class-I, Raipur in Civil Suit No. 446-A/06 has been dismissed and subsequently, the appeal preferred against the above order has also been dismissed. (Parties hereinafter shall be referred to as per their description before the trial Court.)

2. The plaintiff filed a civil suit on 25.6.1998 against the defendants for declaration that the construction undertaken by the plaintiff is legal and the defendants do not have any right to interfere with the said construction

undertaken by him on his own land and for injunction against interference in his construction by the defendants or his subordinate employees/representatives.

3. The defendants submitted their written statement on 13.7.1998 and denied the allegations of the plaint.

4. The application for temporary injunction of the plaintiff was dismissed vide order dated 16.10.2001. On the basis of pleadings of the respective parties issues were framed on 2.11.2001. The suit was posted for recording the evidence of the plaintiff. However, the learned trial Court vide order dated 23.8.2005 rejected the application of the plaintiff for adjournment and closed his opportunity for leading evidence and posted the matter for defendants' evidence on 7.10.2005. On that date none appeared on behalf of the plaintiff, as a result of which the suit was dismissed for non-prosecution.

5. The plaintiff preferred first appeal under Section 96 of the C.P.C. against the order dated 7.10.2005 of the trial Court on 28.1.2006. Thereafter, an application under Section 5 of the Limitation Act was filed on behalf of the plaintiff on 3.2.2006 for condonation of delay as the first appeal was preferred with a delay of 13 days. However, learned Additional District Judge by the impugned order dismissed the application for condonation of delay and subsequently also dismissed the appeal.

6. Learned counsel for the appellant/plaintiff submits that the first appellate Court was not justified in dismissing the appeal as the appeal could not be preferred by the plaintiff in time because at that time he was

suffering from various physical and mental ailments which is evident from the various treatment papers annexed by the plaintiff along with his application for condonation of delay.

7. Relying upon the judgment of the Hon'ble Supreme Court in the matter of **State of Nagaland Vs. Lipok Ao and others** reported in **(2005) 3 SCC 752** it is submitted by learned counsel for the appellant that though the proof of sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the Court but the same should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay and the provisions under Section 5 of the Limitation Act should be construed liberally so as to do substantial justice to the parties and the shortness of the delay is one of the circumstances to be taken into account in using this discretion.

8. Further relying upon the judgment of the Hon'ble Supreme Court in the matter of **M.K. Prasad Vs. P. Arumugam** reported in **(2001) 6 SCC 176** it is argued that while deciding the application under Section 5 and Article 125 of the Limitation Act, the Court ought to keep in mind the judgment impugned, the extent of the property involved and the stake of the parties while deciding an application under Order 9 Rule 13 of the C.P.C. and the same should be exercised to advance substantial justice.

9. Placing his reliance on the judgment of the Hon'ble Supreme Court in the matter of **P. Mani Moopanar Vs. K. Rajammal and others** reported in **(2005) 11 SCC 800** he argued that while considering the application for condonation of delay, this exercise is limited to examining sufficiency of

cause shown to explain delay and the overall view of the matter on merits cannot be taken. On the basis of above, learned counsel for the appellant submitted that the following substantial questions of law arise for adjudication of this appeal;

(1) "Whether the delay of few days i.e. 13 days only in filing the appeal is too inordinate to oust a litigant out of the court of justice when the laws laid down in this regard are that the court should always adopt a liberal view in dealing with the application for condonation of delay and shortness of delay is one of the circumstances to be taken into consideration in favour of the persons seeking condonation of delay?"

(2) "Whether the cause shown by the appellant amounts to sufficient cause within its meaning under the law?"

(3) "Whether advancing substantial justice is prime importance and not technicalities in a court of law and if yes, the finding the courts below in the facts and circumstances of the case narrated herein above can be sustained testing the finding in the aforesaid touchstone?"

10. I have heard learned counsel for the appellant and have gone through the entire file of both the Courts below.

11. From the material available on records it is apparent that the opportunity of the plaintiff to lead evidence was closed by the trial Court on 23.8.2005, the matter was posted for defendants' evidence on 7.10.2005 and on that date the suit was dismissed for want of prosecution as none appeared on behalf of the appellant and thereafter regular appeal was preferred on 28th January 2006 and only on 3.2.2006 an application for

condonation of delay was filed on behalf of the plaintiff which was not supported by affidavit of either the plaintiff or any other person conversant with the facts of the application. The learned Additional District Judge rejected the application after minutely considering the reasons assigned in the application and treatment papers annexed with the application by recording a finding that all the documents except the documents dated 22.10.2005 and 20.12.2005, pertain to a period prior to 7.10.2005 when the suit was dismissed and the other documents also do not mention that the appellant could not contact his advocate as he was critically ill. The said application is also not supported by affidavit and on the basis of above finding the Court below has held that there is no sufficient cause for delay in filing the appeal.

12. It is true that what constitutes sufficient cause cannot be laid down by any hard-and-fast rule and ordinarily shortness of delay is one of the circumstances for considering sufficiency of the cause and condoning the delay. Normally, substantial justice should be preferred against technical approach. In the matter of State of Nagaland (supra) in paragraph – 15 of the judgment it has been held by the Supreme Court that the Court should decide the expression "sufficient cause" with a pragmatic and justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay and the matter should be decided on merits unless the case is hopelessly without merit.

13. In the matter of P. Mani Moopnar (supra) the application under Order 9 Rule 13 of the C.P.C. for setting aside the exparte decree was rejected by the trial Court but the same was allowed by the High Court

without assigning any reason taking overall view of the matter on merits. However, the finding of the High Court was set aside by the Supreme Court and the order of the trial Court was restored on the ground that only sufficiency of cause or otherwise shown to explain the delay is to be considered and the same cannot be allowed or rejected and the delay cannot be condoned on taking an overall view of the matter on merits.

14. In the matter of M.K. Prasad (supra) it has been held that while considering application for condonation of delay, the judgment impugned, the extent of the property involved and the stake of the parties are to be considered when deciding the application under Order 9 Rule 13 of the C.P.C.

15. Thus if we apply the principles laid down in the aforesaid judgments of the Supreme Court in the present set of facts, it would be evident that the Court below after considering the reasons assigned by the appellant in his application for condonation of delay and also after considering the documents annexed with his application, has held that the appellant was negligent in prosecuting the appeal and has failed to make out sufficient cause for condoning the delay. Even otherwise, the appeal preferred by the appellant was hopelessly without merit as he had preferred a regular civil appeal against the order passed by the trial Court by which his suit was dismissed for want of prosecution as has been held by the Supreme Court in the mater of State of Nagaland (supra).

16. On the basis of aforesaid discussions, this Court is of the opinion that no substantial question of law as proposed by the appellant is made out for adjudication of this appeal and the appeal being devoid of

substance deserves to be dismissed at the admission stage itself. Accordingly, it is dismissed.

17. Consequently, M.C.P.No. 833/06 stands disposed of.

Sd/-
Dhirendra Mishra
Judge